

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

EDWARD EUGENE GARNER,

Plaintiff,

v.

WARDEN NASH et al.,

Defendants.

3:16-cv-00410-RCJ-WGC

ORDER

I. DISCUSSION

Plaintiff, who is a prisoner in the custody of the Nevada Department of Corrections, has submitted three civil rights complaints pursuant to 42 U.S.C. § 1983 and has filed an application to proceed *in forma pauperis*. (ECF No. 1, 1-1, 1-2, 1-3).

Plaintiff's application to proceed *in forma pauperis* is incomplete. Pursuant to 28 U.S.C. § 1915(a)(2) and Local Rule LSR 1-2, Plaintiff must complete an application to proceed *in forma pauperis* on this Court's approved form and attach both an inmate account statement for the past six months and a properly executed financial certificate. Plaintiff has not submitted an application on this Court's approved form, a properly executed financial certificate, or an inmate account statement. (See ECF No. 1). As such, the *in forma pauperis* application is denied without prejudice. Plaintiff will be granted an opportunity to cure the deficiencies of his application to proceed *in forma pauperis*, or in the alternative, pay the full filing fee for this action. If Plaintiff chooses to file a new application to proceed *in forma pauperis* he must file a fully complete application to proceed *in forma pauperis*.

Plaintiff has submitted three different civil rights complaints in this action. (See ECF No. 1-1, 1-2, 1-3). There may only be one operative complaint in a case. As such, the Court

1 grants Plaintiff leave to either: (1) file an amended complaint which incorporates all three
2 complaints into one amended complaint, or (2) open three new cases for each of his
3 complaints by submitting an application to proceed *in forma pauperis* and a complaint to the
4 Clerk of the Court for each new case he wishes to open.

5 If Plaintiff chooses to file an amended complaint he is advised that an amended
6 complaint supersedes (replaces) the original complaint and, thus, the amended complaint
7 must be complete in itself. See *Hal Roach Studios, Inc. v. Richard Feiner & Co., Inc.*, 896
8 F.2d 1542, 1546 (9th Cir. 1989) (holding that “[t]he fact that a party was named in the original
9 complaint is irrelevant; an amended pleading supersedes the original”); see also *Lacey v.*
10 *Maricopa Cnty.*, 693 F.3d 896, 928 (9th Cir. 2012) (holding that for claims dismissed with
11 prejudice, a plaintiff is not required to reallege such claims in a subsequent amended
12 complaint to preserve them for appeal). Plaintiff’s amended complaint must contain all claims,
13 defendants, and factual allegations that Plaintiff wishes to pursue in this lawsuit. Moreover,
14 Plaintiff must file the amended complaint on this Court’s approved prisoner civil rights form and
15 it must be entitled “First Amended Complaint.”

16 II. CONCLUSION

17 For the foregoing reasons, IT IS ORDERED that Plaintiff’s application to proceed *in*
18 *forma pauperis* (ECF No. 1) is DENIED without prejudice to file a new application.

19 IT IS FURTHER ORDERED that the Clerk of the Court SHALL SEND Plaintiff the
20 approved form application to proceed *in forma pauperis* by a prisoner, as well as the document
21 entitled information and instructions for filing an *in forma pauperis* application.

22 IT IS FURTHER ORDERED that within **thirty (30) days** from the date of this order,
23 Plaintiff shall either: (1) file a fully complete application to proceed *in forma pauperis*, on the
24 correct form with complete financial attachments in compliance with 28 U.S.C. § 1915(a); or
25 (2) pay the full \$400 fee for filing a civil action (which includes the \$350 filing fee and the \$50
26 administrative fee).

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1 IT IS FURTHER ORDERED that Plaintiff shall submit an amended complaint to this
2 Court within **thirty (30) days** from the date of this order. Alternatively, Plaintiff may close this
3 case and open three new cases by filing new applications to proceed *in forma pauperis* and
4 complaints with the Clerk of the Court for each case that he wishes to open. Plaintiff shall file
5 a notice in this case within **thirty (30) days** from the date of this order if he seeks to close this
6 case and open three new individual cases.

7 IT IS FURTHER ORDERED that the Clerk of the Court shall send to Plaintiff the
8 approved form for filing a 42 U.S.C. § 1983 complaint and instructions for the same. The Clerk
9 of the Court shall also send Plaintiff a copy of his complaints (ECF No. 1-1, 1-2, 1-3).

10 IT IS FURTHER ORDERED that if Plaintiff does not timely comply with this order,
11 dismissal of this action may result.

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13 DATED: This 12th day of July, 2016.

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16 United States Magistrate Judge
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